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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless	)	WT Docket No. 09-104
	)	File Nos. 0003840313, *et al.*,
For Consent To Assign or Transfer Control of Licenses and Authorizations, and Modify a Spectrum Leasing Arrangement	)	ITC-ASG-20090552-00244, *et al.* File No. 0003487528
	)	

REPLY TO OPPOSITION TO PETITION TO DENY

CHATHAM AVALON PARK COMMUNITY COUNCIL
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SUMMARY

The Divestiture Applications cannot be granted until the Commission investigates the circumstances of the proposed AT&T-Verizon Wireless, AT&T - Centennial and Verizon Wireless-Atlantic Tele-Networks transactions together as a whole, given that the transactions would harm the public interest by further strengthening the wireless duopoly in this country. A full FCC hearing is required on the complete set of facts and circumstances surrounding all of the transactions.

First, a Commission investigation into the facts and circumstances surrounding this transaction, as well as the proposed sale of Centennial assets to Verizon Wireless by AT&T and the proposed Verizon Wireless-Atlantic Tele-Networks transaction, is fully warranted. The totality of the AT&T-Verizon Wireless response is that, in essence, AT&T and Verizon Wireless do not need to justify their actions to the Commission. This, of course, is wrong. When the two largest participants in the wireless market are swapping properties in a way that forecloses additional competition or new entrants; when there is no evidence that provides another reason for the transactions; and when it is apparent that Verizon Wireless was willing to sell at least some of the divested assets at prices well below their market value, there are significant questions about the transactions that the Commission should answer before it takes any action. This is the only chance the Commission will get to find out.

Second, it is plain that Verizon Wireless ignored the Commission's admonishment to assist socially disadvantaged businesses ("SDBs") in the divestiture process. Verizon Wireless made no effort to address the substantive issues that affect SDBs. Instead, it opted to use a process that was calculated to give the appearance of seeking SDB buyers without doing anything that would give an SDB a meaningful chance to be a successful bidder. The

Opposition, in fact, acknowledges both that SDBs face issues in obtaining financing ***and*** that Verizon Wireless adopted bidding requirements that effectively shut out SDBs for that very reason. Further, Verizon Wireless's supposed reasons for choosing AT&T over other bidders make no sense. When contrasted with the minimal actual public interest benefits of this transaction, Verizon Wireless's failure to address the Commission's strong policy in favor of diversity weighs heavily against grant of the Divestiture Applications. Congressional leaders have specifically asked the Commission to carefully review Verizon Wireless's actions here.

Third, Verizon Wireless glides over CAPCC's demonstration of the inadequacy of Verizon Wireless's Section 310(b)(4) showing and seeks to have the Commission forget about the foreign ownership limits of the Communications Act. If the Commission finds Verizon Wireless's "don't ask, don't tell" approach to foreign ownership compliance is adequate (1) it cannot apply such a standard just to Verizon Wireless, but must allow all applicants, in all services, to use the same "registered address" standard to demonstrate compliance with Section 310(b)(4); and (2) in doing so, the Commission necessarily will alter substantially its existing precedent on demonstrating compliance with Section 310(b)(4). The public impact of such a policy change would be significant. For example, this approach would allow foreign sovereign wealth funds to own and control U.S. communications companies simply by using a registered U.S. address. If the Commission consciously decides to adopt such a less restrictive interpretation of Section 310(b)(4), then it must apply to all applicants. CAPCC strongly objects, however, to special favorable treatment for a behemoth like Verizon Wireless when the Commission denies those benefits to socially disadvantaged businesses.

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To: The Secretary
Office of the Secretary
Federal Communications Commission

REPLY TO OPPOSITION TO PETITION TO DENY

Chatham Avalon Park Community Council ("Petitioner" or "CAPCC"), by its attorneys and in accordance with the Commission's Public Notice and CAPCC's Motion for Extension of Time filed on August 4, 2009, hereby submits this reply to the joint opposition of AT&T and Verizon Wireless (the "Opposition") to CAPCC's petition to deny (the "Petition") the applications for consent to assign or transfer control of licenses and authorizations and to modify a spectrum leasing arrangement under the above-captioned docket and file numbers. (collectively, the "Divestiture Applications").[1]

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[1] *See AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement,* WT Docket No. 09-104, Public Notice, DA 09-1350 (rel. June 19, 2009); Motion for Extension of Time of CAPCC, WT Docket No. 09-104, filed Aug. 4, 2009; Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, WT Docket No. 09-104, filed July 30, 2009 [hereinafter "*Opposition*"]; Petition to Deny of CAPCC, WT Docket No. 09-104, filed July 20, 2009 [hereinafter "*Petition*"].

As described in its Petition, CAPCC is a community-based organization located in and around Chicago, Illinois, with hundreds of members who are consumers of telecommunications services, some of which are offered by Verizon Wireless and AT&T. CAPCC and its members are concerned about the general impact of the increasing consolidation in the telecommunications marketplace and about the loss of what could be the last meaningful opportunity for socially disadvantaged businesses ("SDBs") to enter the wireless business.[2] CAPCC's concerns about the impact of this transaction on opportunities for SDBs is heightened because Verizon Wireless has not complied with existing Commission requirements for compliance with Section 310(b) of the Communications Act, even while the Commission has required strict compliance of SDBs seeking to obtain Commission authorization.

I. The Opposition Demonstrates That Verizon Wireless Disregarded the Commission's Admonition to Assist Socially Disadvantaged Businesses Seeking to Acquire the Divested Markets.

The *Verizon-Alltel Order* advised "Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture

[2] In a footnote, the Opposition argues that CAPCC has not demonstrated that it has standing. *Opposition* at n. 68. As they do elsewhere in the Opposition, AT&T and Verizon Wireless provide no factual or legal support for their argument, and they are wrong about both the law and the facts. Under decades of Commission precedent, an organization like CAPCC can demonstrate standing by showing that its members are within the area served by one of the parties and will be affected by the consequences of Commission action in the proceeding. *See, e.g., San Francisco Unified School District*, MB Docket No. 04-191, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13327-28 (rel July 16, 2004); *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, RM-2847, Memorandum Opinion and Order, 82 FCC 2d 89 (rel. Oct. 17, 1980). CAPCC did just that, showing that it has "hundreds of members who are consumers of telecommunications services," including those "offered by Verizon Wireless and AT&T," and that those members are affected by the consequences of "increasing consolidation in the telecommunications industry," specifically the consolidation caused by the proposed transaction, including "fewer competitive services at higher consumer prices." *Petition* at 1-2. These claims, as required by the Commission, were supported by a specific affidavit from the President of CAPCC. Thus, there is no doubt as to CAPCC's standing.

Assets and/or accessing spectrum, to the extent possible."[3] CAPCC's Petition demonstrated that Verizon Wireless ignored this admonition, not just by entering into a proposed transaction that, in essence, would swap systems with its largest competitor, but by failing to take any real steps that would address the specific barriers faced by SDBs. AT&T and Verizon Wireless responded to the Petition by simply arguing that Verizon Wireless asked SDBs to bid; but, it did nothing meaningful to provide them with a real opportunity to succeed. This is not what the Commission intended in the *Verizon-Alltel Order*.

The Opposition describes a process that is calculated to give the appearance of seeking SDB buyers without actually giving them a reasonable chance to purchase the divested systems. For instance, Verizon Wireless claims that it asked the Minority Media and Telecommunications Council to identify businesses that might bid, that it asked an unusually large number of potential buyers to participate in the second round of bidding and that it provided information to SDBs before those SDBs had signed non-disclosure agreements or formally expressed interest.[4] By Verizon Wireless's own account, these efforts led to exactly one additional minority-controlled bidder (out of more than 70 bidders overall) and exactly one additional minority-controlled bidder (out of 20) in the second round of bidding.[5]

What Verizon Wireless did not do was to take any realistic steps that would have helped to overcome the acknowledged disadvantages that SDBs face in the financing marketplace. Despite Verizon Wireless's claims, there is nothing at all in the Opposition that contradicts any

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[3] *See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17518 (rel. Nov. 10, 2008) [hereinafter "*Verizon-Alltel Order*"], *reconsideration pending*.

[4] *Opposition* at 22-25.

[5] *Id.* at 22, 25.

of the factual statements in the CAPCC Petition.[6] Verizon Wireless did not provide a period of exclusive negotiation for SDBs, did not permit SDBs to bid without proof of full financing, did not give any SDBs a right of first refusal and did not choose to break the divested markets into smaller groupings to encourage bids by smaller businesses. All Verizon Wireless did, according to the Opposition, was tell SDBs that they could bid on the same terms as AT&T (and even that proved to be illusory).

Perhaps aware that the steps Verizon Wireless says it took were mere window dressing, Verizon Wireless and AT&T provide excuses for the failure to succeed in attracting a successful minority bid – Verizon Wireless wanted to be sure the transaction would be approved promptly and SDBs lack the same access to financing as AT&T and Atlantic Tele-Network, Verizon Wireless's chosen recipient of the remainder of the divestiture systems.[7] However, neither of these claims makes any sense.

First, a transaction with AT&T, as shown by the petitions to deny filed in this proceeding, raises significant issues that would not be raised by a transaction with an SDB that does not have wireless operations, or that has only a modest wireless footprint. A non-AT&T transaction would not raise questions about potential anticompetitive consequences, about whether existing CDMA service would be maintained or about roaming. An SDB, unlike AT&T, would not be the subject of a pending investigation by the Antitrust Division of the Justice Department, or of an inquiry from the Commission about whether it was engaging in anticompetitive behavior in connection with the iPhone and the App Store. In other words, a divestiture to an SDB would

[6] The Opposition suggests that CAPCC did not provide sufficient factual support for its claims. *Id.* at 20, n.72. This is incorrect because the CAPCC Petition was supported by a declaration that supported CAPCC's specific claims. Equally significant, Verizon Wireless does not deny the key elements of those claims, and specifically affirms that it insisted on a financing condition that was likely to shut out SDBs. *Id.* at 25-26.

[7] *Id.* at 25-26.

raise almost none of the questions that are open in this proceeding, and likely could be approved as quickly as – or more quickly than – the proposed transaction with AT&T.

Second, and as explained in CAPCC's Petition, by demanding financing before it would negotiate a transaction, Verizon Wireless effectively shut out SDBs.[8] Verizon Wireless knows this is true, and even acknowledges that SDBs have more difficulty than other buyers in obtaining financing before the deal terms are set.[9] By insisting on pre-approved financing, Verizon Wireless consciously ensured that it would not give SDBs an opportunity to secure any of the divested systems.[10] At the same time, financing will not delay grant of an application so long as it is secured prior to the time an application is filed. Whether or not an applicant has financing at the time it agrees on the terms of the transaction is irrelevant to Commission consideration.

The Opposition claims that Verizon Wireless's failure to "implement mechanisms to assist" SDBs should not be considered because doing so was not a specific condition of the *Verizon-Alltel Order*.[11] This claim misapprehends the impact of the Commission's admonition to address these issues. While it was not a specific condition, it also is plain that the Commission concluded that Verizon Wireless's willingness to address the barriers faced by SDBs is an issue

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[8] *Petition* at 6.

[9] *Opposition* at 26-27.

[10] Verizon Wireless and AT&T claim that "requiring such committed financing is customary[.]" *Opposition* at 26. That claim, however, is not supported, or even mentioned in the declaration from Morgan Stanley, Verizon Wireless's advisor on the transaction. While it is customary to require financing before final transaction documents are executed, parties often agree on the terms of a transaction before financing is arranged.

[11] *Opposition* at 19. The Opposition argues further that consideration of these issues is precluded by the doctrine that the Commission "may not consider whether sale to a different buyer would be preferable." *Id.* This is wrong. CAPCC is not asking Verizon Wireless to sell to another buyer (although, as described in the Petition and this reply, there are good reasons to reject AT&T). Rather, CAPCC is asking the Commission to require Verizon Wireless to engage in a

that must be considered as part of the public interest analysis in this proceeding. Moreover, the *Verizon-Alltel Order* specifically states that interested parties should wait until this proceeding to address questions concerning "the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest, including diversity issues."[12]

The public interest impact of Verizon Wireless's decision to disregard the Commission's intent that the divestiture transaction create opportunities for SDBs is underlined by the Congressional response to the proposed transaction with AT&T. Twelve members of Congress have written to the Commission to express their concern that Verizon Wireless adopted a process that effectively prevented SDBs from making successful bids and to ask the Commission and the Department of Justice to seek to have Verizon Wireless "open good faith negotiations with small business owners prior to migrating all or most of these valuable assets from one behemoth company to another."[13] The letter further notes that "[p]roceeding with divestitures that only shuffle assets among large media companies is inconsistent with the FCC's public interest mandate."[14]

Given the Commission's repeated conclusion that increasing diversity is a vital public policy goal, one mandated by Congress in Sections 257, 309(i) and 309(j) of the Communications Act and pursued by the Commission for years, as well as the specific

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process that would advance, rather than hinder, the Commission's own goals of increasing diversity.

[12] *Verizon-Alltel Order,* 23 FCC Rcd at 17518.

[13] Letter of the Hon. Sanford D. Bishop, Jr., the Hon. Corinne Brown, the Hon. Danny K. Davis, the Hon. Marcia L. Fudge, the Hon. Eddie Bernice Johnson, the Hon. Carolyn C. Kilpatrick, the Hon. Sheila Jackson Lee, the Hon. John Lewis, the Hon. Gwen S. Moore, the Hon. Grace F. Napolitano, the Hon. Charles B. Rangel and the Hon. Diane E. Watson to the Hon. Michael Copps, May 20, 2009 at 1 [hereinafter "*Congressional Letter*"]. Commissioner Copps, in response, has noted that the issues raised in the Congressional letter will be considered as part of the Commission's public interest analysis. *See, e.g.,* Letter of the Hon. Michael Copps to the Hon. Corrine Brown, July 2, 2009.

Congressional concerns about this transaction, Verizon Wireless's failure to heed the Commission's request in the *Verizon-Alltel Order* has significant public interest implications.[15] Verizon Wireless's decision not to advance this vital goal – despite specific instruction from the Commission – weighs heavily against a finding that the transaction is in the public interest. In fact, Verizon Wireless's cynical handling of the divestiture process, in light of the Commission's admonition, is a rather telling indication of its commitment to diversity.

Moreover, there is almost nothing to weigh on the other side of the equation. Most of the claimed benefits of the transaction relate to increasing choices for wireless consumers, but those are benefits of the divestiture, which already was required, not of a sale to AT&T.[16] Since all of these benefits already are assumed by the *Verizon-Alltel Order*, claiming them here is, in effect, the same as claiming that there will be public interest benefits because AT&T will comply with the number portability rules in the divested markets. Similarly, there is nothing unique about AT&T's claim that it will expand availability of 3G networks in Alltel markets, since every carrier continuously expands the availability of advanced services to meet demand. This is not even a result of the divestiture, but merely an inevitable consequence of the state of the wireless marketplace in the United States.

In practice, the most significant benefit of the transaction may be that it will decrease AT&T's roaming costs. AT&T, however, makes no promise that it will reduce consumer charges in response to these reduced costs, so the public interest impact of even that benefit is limited at best. When balanced against Verizon Wireless's willful disregard of the

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[14] *Congressional Letter* at 1.

[15] *Petition* at 22.

[16] *See Opposition* at 3 (describing "expanded choices of services and features, diverse rate plans and handsets with advanced capabilities" and "the benefits of vigorous competition" as public interest benefits of the transaction).

Commission's intention to expand diversity and, tellingly, Verizon Wireless's transparent efforts to make it appear that it gave SDBs consideration when it had no intention of actually doing so, this benefit is nowhere near sufficient to justify authorizing this transaction.

II. The Facts Justify an Investigation into the Circumstances of Verizon Wireless's Proposed Sales of the Divestiture Assets.

CAPCC's Petition showed that an investigation into the circumstances of the proposed transaction is necessary to determine whether Verizon Wireless and AT&T engaged in anticompetitive or otherwise inappropriate behavior in the negotiations that led to this transaction, the proposed sale of Centennial assets from AT&T to Verizon and the proposed sale of Alltel assets to Atlantic Tele-Networks. The Opposition responds to that showing with a single paragraph that does not address the basis for that request, but instead claims that, in essence, Verizon Wireless and AT&T can do whatever they want to do.[17]

While Verizon Wireless and AT&T might wish this were true, there are significant questions about how Verizon Wireless conducted itself in selecting the buyers for the Divestiture Assets, and that the market swap proposed by Verizon Wireless and AT&T suggests an intent to divide the wireless market between the two largest competitors, not to compete with each other. These are matters that are well within the Commission's investigative power and, equally important, are not answered by the record before the Commission in this proceeding.

For instance, CAPCC's Petition raises three specific questions to be considered in an investigation: (1) whether the two Verizon Wireless-AT&T transactions are linked to each other; (2) whether Verizon Wireless already had identified AT&T as the buyer before it formally started the divestiture process; and (3) whether other bids that Verizon Wireless did not accept would have, alone or in combination, yielded a higher purchase price. The Opposition does not

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[17] *Id.* at 21.

respond to any of these the questions, and does not even claim that AT&T submitted the highest bid or that AT&T and Atlantic Tele-Networks were the only companies that met Verizon Wireless's self-imposed criteria for choosing buyers for the divested markets.[18] The Opposition also fails to explain why Verizon Wireless would sell some assets to Atlantic Tele-Networks at prices that appear to be far below market prices, but would make no similar concessions to SDBs for any markets, or to deny that Verizon Wireless told Congressional staffers that it was compelled to conduct a pure auction, when such an auction was not required by the *Verizon-Alltel Order.*[19]

Given the unwillingness of AT&T and Verizon Wireless even to respond to these questions, and the significant competitive consequences that could arise from allowing AT&T and Verizon Wireless to divide the wireless market between themselves, it is entirely appropriate for the Commission to engage its investigative powers under Section 403 of the Communications Act to obtain the answers. The public and the Commission are entitled to some transparency about these divestiture efforts; not the total obfuscation offered by Verizon Wireless and AT&T.

Contrary to the claims in the Opposition, Section 403 of the Communications Act is a broad grant of authority, and is appropriately invoked to address any issue of significance that is of concern to the Commission.[20] A Section 403 investigation is particularly appropriate when, as here, the relevant parties have not willingly provided the information necessary to address the

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[18] *See, e.g., id.* at 26-27.

[19] *See Petition* at n. 21.

[20] 47 U.S.C. § 403; *see also Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters,* MB Docket No. 08-187, Notice of Inquiry, FCC 09-43, 24 FCC Rcd 6141, n.1 (rel. May 18, 2009) (explaining that Sections 4(i) and 403 give "the Commission broad authority to initiate inquiries . . ."); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket 05-255,Twelfth Annual Report, 21 FCC Rcd 2503, 2613 (rel. March 3, 2006); *Broadcast Localism*, MB Docket No. 04-233, Notice of Inquiry, 19 FCC Rcd 12425 (rel. July 1, 2004).

issues. The imperative to obtain full information also is very strong when, also as here, there may be no practical remedy if the Commission does not investigate the issues fully before it acts on the underlying applications. Consequently, the Commission would be fully justified to invoke its Section 403 authority and investigate all of the circumstances involved in the proposed Verizon Wireless, AT&T and Atlantic Tele-Networks transactions before taking any action.

III. If It Accepts Verizon Wireless's Interpretation of Section 310(b)(4), the Commission Must Apply It to All Applicants and, in Doing So, the Commission Will Substantially Alter Its Present Policy.

In its Opposition, Verizon Wireless glides over CAPCC's demonstration of the inadequacy of Verizon Wireless's Section 310(b)(4) showing and seeks to have the Commission forget about Section 310(b)(4) as well, because neither Verizon Wireless nor the Commission's *Verizon-Alltel Order* have any rational answer to that analysis. Verizon Wireless has not provided the Commission with any reasonable basis for applying to Verizon Wireless a different interpretation of Section 310(b)(4) than it applies to every other applicant. The Commission must not allow a special statutory interpretation for the sole benefit of Verizon Wireless to stand. Doing so would allow Verizon Wireless access to foreign capital and investment under terms far more liberal than those the Commission has specifically denied to new entrants and SDBs and would contravene the Commission's stated policies to encourage the entry of SDBs and new entrants into the media and telecommunications industries that the agency regulates.

Verizon Wireless presumed citizenship for purposes of its Section 310(b)(4) showing from the "registered addresses" of the "beneficial owners" of its shares, without any further inquiry.[21] In referring to the "beneficial owner" of a share, Verizon Wireless means not the

[21] Verizon Wireless relies upon letter it filed on April 8, 2008, in WT Docket No. 07-208 (the "April 2008 Letter"). In the April 2008 Letter, Verizon Wireless had a third party assess the foreign ownership of both Verizon and Vodafone based on (1) "registered addresses" (that is, mailing addresses) provided by registered stockholders and (2) mailing addresses provided to

ultimate owner of the stock, but only the owner immediately above a pure nominee holder. So long as that entity or individual had provided a U.S. address to a nominee holder, Verizon Wireless counted that entity as wholly U.S. owned and controlled, even if the entity was a U.S. subsidiary of a foreign corporation or a foreign sovereign wealth fund with an office in the U.S., as a number of such funds have. The Commission, in contrast, always previously required that assessments of compliance with Section 310(b)(4) foreign ownership restrictions look all the way up the chain of ownership to assess the citizenship of the ultimate beneficial owners, and not just the citizenship of the first level non-nominee holder, which could be, for example, a U.S. corporation owned and controlled by a foreign entity or a foreign government.[22]

Here, Verizon Wireless has capitalized heavily on the ambiguity of the terms "beneficial owner" and "beneficial ownership." In common parlance, these terms can mean the first level holder immediately below a pure nominee, but that is never what the Commission has meant in requiring an assessment of foreign beneficial ownership and voting rights. The Commission, as CAPCC has demonstrated, has required applicants to consider direct and indirect foreign ownership of its shares. Verizon Wireless, in referring to the registered address of the "beneficial owner" (singular) of a share, has ignored direct and indirect ownership or control of a "beneficial owner" by foreign persons or governments.

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nominee holders by those stockholders holding their interests through nominees (which Verizon Wireless refers to as "beneficial owners").

[22] Thus, under present law, the Commission considers "all relevant ownership interests up the vertical chain including 'even small investments in publicly traded securities.'" *See Foreign Ownership Guidelines*, International Bureau, DA 04-3610, 19 FCC Rcd 22612, 22625 (rel. November 17, 2004) [hereinafter "*Foreign Ownership Guidelines*"], *citing Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Docket Nos. IB 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23941 (rel. Nov. 26, 1997). The Commission has taken the position that these standards apply "even when the alien's ownership interest is non-

As demonstrated below, if the Commission finds Verizon Wireless's Section 310(b)(4) showing adequate (1) it cannot apply those standards just to Verizon Wireless, but must allow all applicants in services subject to Section 310(b)(4), including new entrants and socially disadvantaged businesses, to use the same "registered address" standard to demonstrate compliance with Section 310(b)(4); and (2) in doing so, the Commission necessarily will alter substantially its existing precedent on demonstration of compliance with Section 310(b)(4). As CAPCC previously stated, it would have no objection to a Commission decision to adopt a less restrictive interpretation of Section 310(b)(4) that would apply to all applicants. CAPCC strongly objects, however, to special favorable treatment for a behemoth like Verizon Wireless when the Commission denies those benefits to new entrants and socially disadvantaged businesses.

A. Acceptance of Verizon Wireless's Position Means That the Commission Must Accept the "Registered Address" Approach for Section 310(b)(4) Showings for All Applicants.

By failing to respond in any substantive way to CAPCC's analysis of Section 310(b)(4) and stating only that the FCC has "already ruled on the issue," Verizon Wireless seeks to divert the Commission's attention from this fact: If the Commission accepts Verizon Wireless's position, it cannot avoid applying the same standard to all other applicants subject to Section 310(b)(4).

Verizon Wireless has given the Commission no basis for limiting its "registered address" presumption to Verizon Wireless or similarly-sized companies. In presenting its methodology as an alternative to the sample survey that the Commission's policies normally require for companies with widely held shares, Verizon Wireless states only that its partners have a large

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influential in nature." *Foreign Ownership Guidelines*, at 22625 n.29 (*citing Wilmer & Scheiner II*, Memorandum Opinion and Order, 1 FCC Rcd 12, 13 (rel. Oct. 9, 1986).

number of shares and its method is "more likely to yield accurate citizenship information than a citizenship survey of only a small portion of shares." In the *Verizon-RCC Order*,[23] the Commission, advancing additional arguments that Verizon Wireless appears neither to have made nor supported in the public record, premised its acceptance of the methodology on supposed "special circumstances," but mentioned only two: (1) both Verizon Wireless partners have a large number of shares and it would be difficult to trace the direct or indirect foreign ownership of the beneficial owners themselves and (2) a survey would be "difficult and costly," so that the benefit of the survey outweighed the burden. This rationale does not distinguish Verizon Wireless's situation from that of any new entrant or socially disadvantaged business seeking to ascertain the foreign ownership and control of potential investors.

First, as CAPCC has demonstrated, the number of outstanding shares that an entity may have is entirely irrelevant to assessing the burden of a sample survey. The sample size required for a statistically valid random sample survey does not vary linearly with the size of the population to be sampled. Survey research firms regularly conduct statistically valid samples of the entire United States on a wide range of variables with a randomly selected survey group of a few hundred. The number of outstanding shareholders in its partners, therefore, does not distinguish Verizon Wireless from any other applicant faced with the need to ascertain the level of foreign ownership and control in of a number of potential investors and owners with multilevel ownership structures.[24]

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[23] *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket No. 07-208, Memorandum Order and Declaratory Ruling, 23 FCC Rcd 12463, 12482-83 (rel. Aug. 1, 2008), *reconsideration pending*.

[24] Using a valid random sample of its shares outstanding, Verizon Wireless thus could have analyzed the ownership and control of those sample shares in the same depth that the Commission requires for its smaller would-be competitors and for SDBs. Verizon Wireless then would have faced the same risk as those smaller competitors and SDBs that ownership information or insulation status for some investors would be unavailable or denied to it, or that

Second, the Commission consistently has assessed "burdensomeness" in light of the resources of the complaining party. If ascertaining the direct and indirect ownership of even a small random sample of its immediate shareholders is too burdensome a task for even a leviathan like Verizon Wireless to undertake, then that burden certainly is too great to impose on any other party, particularly new entrants and socially disadvantaged businesses. As the Commission has previously held, Verizon Wireless faces an extraordinarily high threshold in establishing that any regulatory obligation is "unduly burdensome" to it. In an order establishing requirements for reporting of disruptions to communications, for example, the Commission stated:

> Thus, for example, we greatly doubt that the number of outage reports to be filed by Verizon will rise by a factor of 20, and even if it did, we doubt that Verizon would need to hire an additional five employees to file a little over one outage report a day. **But even if it were to do so, we would not consider this to be a significant burden because of Verizon's size and large, multifaceted operations in more than 35 states, commonwealths and territories.** In summary, we agree with the Staff of the Kansas Corporation Commission and with the Connecticut Department of Public Utility Control that our revised rule will not impose requirements that are unduly burdensome.[25]

In fairness to Verizon Wireless, however, Verizon Wireless never seriously argued that complying with the Commission's settled policies on citizenship determination would strain its capacities. Nevertheless, the Commission, which strictly and consistently applies those standards to new entrants and socially disadvantaged businesses in broadcasting and telecommunications, found its normal requirements too burdensome for Verizon Wireless. If

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some investors with "registered addresses" in the United States or a WTO member nation would turn out to be owned or controlled in whole or in part in a way adverse to the grant of a Section 310(b)(4) determination.

[25] *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 16830, 16914 (rel. Aug. 19, 2004) (emphasis supplied).

that decision stands, the Commission must apply the same standards to all applicants subject to Section 310(b)(4).[26]

B. Acceptance of Verizon Wireless's Position Will Alter Substantially the Commission's Existing Precedent on Demonstrating Compliance with Section 310(b)(4).

In declining to respond substantively to CAPCC's analysis, Verizon Wireless has failed to apprise the Commission of the effect of adopting a special statutory interpretation for Verizon Wireless which, as shown above, necessarily would extend to all applicants subject to Section 310(b)(4).

First, the Commission no longer would have any basis ever to require public companies and other companies to perform random sample surveys. If a random sample survey – previously the Commission's preferred method for an applicant with widely held stock to assess citizenship qualifications – imposes undue burdens on Verizon Wireless, it necessarily imposes undue burdens on every other applicant and no longer can be reasonably required.

Second, any applicant could conclusively presume the citizenship of its stockholders or investors based upon the registered address of any stockholder that is not a pure nominee. The Commission's prior pronouncements on the impermissibility of reliance on shareholder addresses to ascertain citizenship would be overturned and no longer of any effect. Verizon Wireless sought to distinguish that consistent line of precedent by pleading that its contractor

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[26] *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (when the Commission makes contemporaneous decisions according different treatment to apparently similarly situated applicants, it must explain why it has treated the applicants differently); *Green Country Mobilephone, Inc. v. FCC*, 765 F.2d 235 (D.C. Cir. 1985) ("We reverse the Commission not because the strict rule it applied is inherently invalid, but rather because the Commission has invoked the rule inconsistently"); *New Orleans Channel 20, Inc.* v. FCC, 830 F2d 361, 366 (D.C. Cir. 1987) (noting the "importance of treating parties alike . . . when the agency vacillates without reason in its application of a statute or the implementing regulations"); *McElroy Elec. Corp. v. FCC*, 990 F.2d 1351, 1365 (1993) (reminding the Commission "of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment").

used the registered address of the "beneficial owner" of the share and not just a "shareholder address" to presume citizenship. It is clear, however, that, by "beneficial owner," Verizon Wireless means only a stockholder that is not a pure nominee. Thus, for shareholders that hold their stock in registered name and not through a nominee, "registered address of beneficial owner" and "registered address of shareholder" mean exactly the same in the lexicon that Verizon Wireless seeks to foist on the Commission.

Third, the Commission would have sanctioned and approved a new "don't ask, don't tell" regime for dealing with foreign ownership under Section 310(b)(4). In the *Verizon-Alltel Order*, the Commission did four things: (1) approved Verizon Wireless's presumption of shareholder citizenship from the registered addresses shareholders gave their nominees, (2) stated that Verizon Wireless nevertheless must take into account the foreign ownership of which it has actual knowledge, (3) imposed no obligation on Verizon Wireless to seek any such knowledge; and (4) commended Verizon Wireless for adopting procedures for ascertaining citizenship from "registered addresses" through a third party under a double-blind approach that ensures Verizon Wireless can never, even inadvertently, acquire any knowledge of the citizenship of a stockholder inconsistent with the stockholder's registered address. This new policy places a premium on the ascertainment of foreign ownership by third parties using proprietary processes and ensures that neither the applicant nor the Commission will ever know what relationship, if any, a U.S." registered address" has to the actual percentage of direct and indirect foreign ownership and control in a stockholder. The Commission effectively has made a U.S. mailing address that a shareholder gives to its nominee, an attribute that a shareholder may change at will, conclusive evidence of wholly U.S. ownership and control and has made sure neither the Commission nor other parties can question that presumption.

Fourth, the Commission would remove any rationale for requiring applicants to inquire into foreign ownership or control at any level beyond the citizenship of the entity that directly invests in its shares. Even that would be a more far-reaching analysis of foreign ownership than the Commission required of Verizon Wireless, which relied upon just the registered addresses of its shareholders for all of the shareholders of each of its partners and was not required to assess whether a shareholder that gave a U.S. mailing address was organized under the laws of a foreign country, much less whether it might be the subsidiary of a foreign corporation or sovereign wealth fund.

The purpose of the foreign ownership restrictions in Section 310(b)(4) and the requirement to ascertain foreign ownership is to promote national security by avoiding undue foreign influence over U.S. communications by foreign persons or, in the case of telecommunications, foreign nationals not subject to treaty obligations with the United States. Effectively exempting the nation's largest carrier from those requirements while enforcing them vigorously against new entrants and SDBs whose operations are highly unlikely to have any national security implications turns that policy on its head and converts the process into the protection of Verizon Wireless against competition rather than the protection of the public interest.

IV. Conclusion

For all these reasons, the Commission should deny the above-captioned applications until Verizon Wireless first conducts a divestiture process that provides appropriate, meaningful consideration for potential SDB buyers of these assets and second, demonstrates actual compliance with Section 310(b)(4) of the Communications Act.

Respectfully submitted,

CHATHAM AVALON PARK COMMUNITY COUNCIL

By: ______________________

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August 11, 2009

CERTIFICATE OF SERVICE

I, Aaron Shainis, do hereby certify that on this 11th day of August, 2009, copies of the foregoing Reply to Opposition to Petition to Deny were served as follows:

To Federal Communications Commission as follows (via hand delivery):	
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To Office of the Chairman as follows: The Honorable Julius Genachowski 445 12th Street, S.W. Washington, D.C. 20554	**To the Office of the Chairman as follows:** Bruce Gottlieb 445 12th Street, S.W. Washington, D.C. 20554
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	Aaron P. Shainis **Signed: Aaron Shainis** **August 11, 2009** **Date**